Before the Lords Commiſſioners of Appeals in Prize Cauſes.

Koninghen Eſther,

John Gardner, Maſter.

Appendix to the Reſpondent's CASE.

Witneſſes examined in preparatory.

John Gardner, late Maſter of ſaid Ship, examined 7 *Nov.* 1758.

1. SAITH, he knows the private Ship of War the *Fonthill*, and the Schooner the *Koninghen Eſther*, has known her about three Months; ſaid Schooner is he believes Plantation-built, was formerly the Property of Subjects of his *Britannick* Majeſty, was taken by the *French*, and condemned as lawful Prize at *Guadaloupe*; that one *Aaron Henriques Moron* is ſole Owner of the Schooner, and is a Subject of the *States General*, and reſides at *Curacoa*, where he purchaſed the Schooner from a *Dutchman*. The Schooner about two Months ago ſailed from *Curacoa* on a Voyage to *Cape Francois* with a Cargo of dry Goods and Wine, and five and twenty Barrels of Flour, and one thouſand and twenty-five Pieces of Eight; had on board at the Capture all the uſual Papers granted at *Curacoa* to *Dutch* Veſſels ſailing from thence, which were delivered to the Captors at the Capture. The Schooner arrived at *Cape Francois* about the 15th of *September* laſt, having cleared out at *Curacoa* for that Place; that one *Gabriel Pinedo* went as Supracargo in the Schooner, to whom the whole Cargo was delivered at the Cape; that Permiſſion was granted by the *French* King's Officers at the Cape to diſpoſe of the Cargo there to Subjects of the *French* King reſiding there, which Permiſſion was granted in conſideration of the Flour and Wine being imported to the Cape in the ſaid Schooner, which Schooner was loaded at *Cape Francois* with her preſent Cargo, which conſiſts of Sugar, Indigo, and Coffee, after having paid the cuſtomary Duties to the *French* King's Officers for the ſame; ſaid Schooner about the 15th Day of *October* laſt ſailed on a Voyage from thence directly for *Curacoa*, that about the 30th Day of ſaid *October* the Schooner was taken by ſaid private Ship of War *Fonthill*, and ſent into this Iſland, where they arrived the 5th Inſtant, that the People belonging to the Schooner have been very well uſed by the Captors ſince the Capture.

Jan Adrians, Mate of ſaid Schooner, examined, 7 *Nov.* 1758.

Knows the private Ship of War the *Fonthill*, and alſo the Schooner called the *Koninghen Eſther*, has known the ſaid Schooner for about two Months, that ſhe is the ſole Property of *Aaron Henriques Moron*, ſailed from *Curacoa* about two Months ago for *Cape Francois* in *Hiſpaniola* with a Cargo of dry Goods, Wine, and Money, and alſo Flour, all which were imported into *Cape Francois* in the ſaid Schooner; about the 15th of *September* laſt Permiſſion was granted for the ſaid Schooner to unload the Cargo, and land and diſpoſe of the ſame by the proper *French* Officers reſiding there, all which Cargo was actually ſold to the *French* Subjects reſiding at or near the Cape; that a Cargo of *French* Sugar, Indigo, and Coffee, was laden on board the Schooner at *Cape Francois*, with which about the 15th of *October* laſt ſhe ſailed on a Voyage from *Cape Francois* to *Curacoa*, in the courſe of which Voyage the Schooner with the *French* Sugar, Coffee and Indigo on board the ſame, was about the 30th of *October* laſt taken as Prize by the private Ship of War called the *Fonthill*, and ſent into this Iſland, where they arrived about the 5th Day of *November* Inſtant at *Port-Royal*; he and the People on board the Schooner have been well treated by the Captors ſince their Capture.

Witneſſes

Witneſſes examined on Behalf of the Captors.

Matthias Kitchin, Commander of the *Fonthill*, examined, 11 *Dec.* 1758.

1. Knows the Schooner *Koninghen Eſther*, has known her ſince the 30th Day of *October* laſt, when Deponent took her off the Eaſt End of the Iſland of *Hiſpaniola*; doth not know who were the Owners of her.

2. As Deponent hath been informed by *John Gardner*, Maſter of the Schooner, when ſhe was taken, that about the Month of *September* laſt, ſaid *John Gardner*, in the Schooner, ſet ſail from the Iſland of *Curacoa* in *America*, loaden with a Cargo of dry Goods and Proviſions on a Voyage to *Cape Francois* in *Hiſpaniola*; Deponent doth not know to whom the Cargo was delivered; was informed it was delivered to a *French* Factor at *Cape Francois*; cannot tell, nor doth he remember to have heard particularly when the Schooner arrived at *Cape Francois*; hath been informed by ſaid *John Gardner*, the Cargo of the ſaid Schooner was ſold to Subjects of the *French* King at *Hiſpaniola*.

3. The Schooner was about nine Days after ſhe left *Cape Francois* taken and ſeized by Deponent as *French* Property, being then loaded with Sugar, Coffee, and Indigo, being all *French* Produce of *Hiſpaniola*, as ſaid *John Gardner* acknowledged to Deponent; that a *French* Factor purchaſed the ſame from Subjects of the *French* King at *Hiſpaniola*.

4. The Schooner with the Cargo of *French* Produce on board, was about the 30th of *October* laſt, off the Eaſt-end of *Hiſpaniola*, in her Voyage from *Cape Francois*, taken and ſeized by this Deponent, for having on board the ſaid Cargo of *French* Produce, and as belonging to Subjects of the *French* King; and was brought into this Iſland by the Order and Direction of this Deponent: *John Gardner*, Captain of the Schooner, informed Deponent at the Capture, they were bound to *Curacoa*.

5. Doth not know, nor hath he heard, nor doth he believe, that any legal and authentick Papers were granted by any of the publick Officers of the *States General*, authorizing or warranting Importation of Proviſions or other Goods, Wares, Merchandizes or Effects in the ſaid Schooner, from any of the *Dutch* Settlements in *America*, into the Territories or Countries of the *French* King in *America*; on the contrary, Deponent verily believes, and hath been informed, no ſuch Trade is allowed to be carried on by the Subjects of the *French* King by the *States of Holland*; that no legal Permiſſions are given to any ſuch Traders; that if they trade with the *French* in ſuch Traffick, ſuch Traders do it at their own Riſque, and without the Concurrence of any Authority from the *States of Holland*; believes there is no free Trade or Commerce between the *Dutch* and the *French* in time of War with *Great-Britain*, and as Deponent believes, never was publickly notified or allowed by the *States General*; and their publick Officers hath heard, and verily believes, ſaid *Dutch* Veſſels would not be allowed on any Account, to go into, or trade in any of the *French* King's Ports, or into his Territories or Dominions, unleſs they carried Proviſions and all other neceſſary Implements in time of War to ſupply the Subjects of the *French* King, who, as Deponent hath been informed, have been greatly ſtraitned in *America* for want of Proviſions particularly, and believes the *Dutch* Veſſels have been the general Furniſhers and Carriers of Stores, Proviſions, and all other Neceſſaries for the Uſe of the *French* King's Subjects during this preſent War; ſaith, he believes all Clearances for *Dutch* or other Veſſels, from this Deponent's own Experience, from one to another, muſt be ſpecified, elſe ſuch Clearance is void: that Veſſels upon an open and fair Trade cannot get into any Port or Place unleſs on Account of Diſtreſs of ſome kind or other, but to the particular Place mentioned in ſuch their Clearance. Laſtly, that *John Gardner*, Captain of the Schooner, ſome Time after Deponent took him, ſaid, if he had thought Deponent's Ship was of the Force ſhe was, he would not have come nigh her, and would have gone another Way if he could.

Thomas Cracknell, Steward on board the *Fonthill*, examined 11 *Dec.* 1758.

1. Knows and firſt knew the Schooner *Koninghen Eſther*, upon their meeting with her off the Iſland of *Porto Rico*, about the latter end of *October* laſt; doth not know the Owners of the ſaid Schooner.

Deponent heard Captain *Gardner*, of ſaid Schooner ſay, he came in her from *Curacoa* to *Hiſpaniola* or *St. Domingo*, where he had diſpoſed of his outward-bound Cargo; that he had been with her at *Cape Francois* and loaded there.

2. Deponent heard Captain *Gardner* ſay, that he had been out of *Cape Francois* about ten Days before they were met by the *Fonthill*; and alſo heard him ſay, that the Schooner was loaded with Sugars, Indigo, and Coffee, of the Growth of the Iſland of *Hiſpaniola*.

3. Said Schooner with the Cargo of *French* Goods on board her, was on or about the twenty-fourth Day of *October* now laſt paſt, off the Iſland of *Porto Rico* in her Voyage from *Cape Francois*, taken by the private Ship of War the *Fonthill* as Prize, being loaded with *French* Goods, and brought into this Iſland; that he heard *John Gardner* ſay, the Schooner was bound to *Curacoa* when taken.

4. Doth not know of any legal and authentick Papers granted by any of the publick Officers of the *States General*, authorizing or warranting the Importation of Proviſions or other Goods, Wares, or Merchandizes in her from the *Dutch* Settlements in *America* into the Territories and Countries of the *French* King in *America*; never heard that there were a free Commerce and Trade belween Subjects of the *States General* and the Subjects of the *French* King in Time War between his *Britannick* Majeſty and the *French* King permitted; nor

5. did

did Deponent ever hear ſuch Trade or Commerce allowed; on the contrary, hath heard it was not permitted, and is a Stranger to what Papers or Clearances *Dutch* Traders carry either in *Europe* or *America*.

Laſtly, That when Captain *Gardner* came on board the *Fonthill*, ſaid, he did not expect to meet any *Engliſh* Veſſel of Force ſo far to the Southward, for if he had ſuſpected to meet any ſuch Veſſel that would carry him to *Jamaica*, they ſhould have ſeen his ſmoke; and ſaid, he had been often on ſuch Voyage in that Track and never met any *Engliſh* Veſſel of Force; that he took the *Fonthill* to be a large *Dutchman* going that Way to ſhun the *Engliſh*, elſe he would not have bore down as he did.

John Gardner, Maſter of ſaid Schooner.

1. Knows and hath known the ſaid Schooner about four Months, that ſhe during ſuch his knowledge, and at the Capture, was the Property of *Aaron Henriques Moron*, a natural born Subject of the *States General*, and reſident at *Curacoa*, knows and hath known the private Veſſel of War the *Fonthill* ſince the 30th of *October* laſt.

2. That the Schooner in the Month of *September* laſt ſailed from the Iſland of *Curacoa* with a Cargo of dry Goods and Proviſions bound to *Cape Francois* in *Hiſpaniola*, where the ſame was diſpoſed of to the Subjects of the *French* King by Permiſſion of the *French* Governor reſiding there, on paying the Duties due thereon to his Chriſtian Majeſty.

3. That the Schooner on or about the 15th of *October* laſt ſailed from *Cape Francois* with a Cargo of Sugar, Coffee, and Indigo, of the Produce of the *French* Part of *Hiſpaniola*.

4. That the Schooner with the Cargo of *French* Produce on board her on or about the 30th of *October* laſt was taken in the Latitude of about 16 Degrees and 38 Minutes North Latitude by the ſaid private Ship of War the *Fonthill*.

5. That free Trade and Commerce between the Subjects of the *States General* and the Subjects of the *French* King, both in *Europe* and *America*, now in time of War between his *Britannick* Majeſty and the *French* King, is permitted on Payment of the *French* King's Duties; that he had a legal Clearance or Paſſport on board to go with the Schooner and Cargo of dry Goods and Proviſions to any free Port in *America*, believes free Trade and Commerce in time of Peace is permitted in the *Weſt-Indies* between the *French* and *Dutch* on payment of *French* King's Duty, which are there very high or large, and which makes the *Dutch* that they do not chuſe to trade with the *French*; that it is lawful and cuſtomary for *Dutch* or other Veſſels to carry on board on their Voyage a publick Clearance to ſhew the Port of their Deſtination.

Witneſſes examined on behalf of the Claimant.

John Gardner, Maſter of the ſaid Schooner examined, 11 *Dec.* 1758.

1. Saith, he knows and hath known the Schooner *Koninghen Eſther* ſince the firſt of *September* laſt, ſince which time Deponent hath been Maſter of her the Schooner with outward and homeward bound Cargoes, was the ſole Property of *Aaron Henriques Moron* of the Iſland of *Curacoa* Merchant, and hath belonged to him ever ſince Deponent knew her, and was actually ſo at the Capture; that the ſaid *Aaron Henriques Moron* was born at *Curacoa*, and hath all his life-time been a Subject of the *States-General*, and ſtill reſides at *Curacoa*; the Schooner is *North America*-built, as he believes, and is of the Burthen of ninety or one hundred Tons.

2. That the Cargo of the Schooner when ſhe left *Curacoa* was the entire Property of ſaid *Aaron Henriques Moron*; that the ſame conſiſted of dry Goods, forty Barrels of Wine, and twenty-five Barrels of Flour, and about a thouſand and twenty-three Pieces of Eight in Money; the ſame was ſhipped on Account and Riſque of the ſaid *Aaron Henriques Moron*, and on no other Perſons Account.

3. That no part of the Cargo on board the Schooner at the time of her ſailing from *Curaçoa*, or at the Capture thereof, conſiſted of Powder, Ball, Soldiers Arms, Ammunition, or any or either of the Articles declared to be contraband or prohibited by any Treaty or Treaties ſubſiſting between his *Britannick* Majeſty and the *States General*, or by his *Britannick* Majeſty's Declaration of War againſt the *French* King.

4. That there were on board the Schooner ſeveral private Adventures, that the ſame were ſhipped by ſaid *Aaron Henriques Moron* on the proper Account and Riſque of this Deponent, one of the People, and *Gabriel Pinedo*, who belonged to the Schooner when ſhe left *Curacoa*, and conſiſts of the ſundry Particulars mentioned in the Invoice of the Cargo now remaining in the Regiſter-Office of this Court.

5. That no part of the Schooner, Cargo, or private Adventure, at the Capture, were the Property of the *French* King, his Subjects, or any Perſon inhabiting within his Countries, Territories, or Dominions, or held in Truſt for him, them, or any of them, or for his, their, or any of their Uſe, neither is he, they, or any of them, in any manner intereſted therein, or in any part thereof.

6. That the Schooner, before ſhe was taken by the Relators in this Cauſe, was met with on the High Seas by a private Veſſel of War belonging to *Rhode-Iſland*, whereof *Samuel Smith* was Commander, on the North of *Mona* about nine or ten Leagues, who detained her for the Space of about three Days, and ſearched her as thoroughly as poſſibly in every part; that ſaid Capt. *Smith* and his Officers narrowly ſearched and examined the whole Cargo then and now on board, and alſo the ſeveral Papers now remaining of Record in the Regiſter-Office of this Court belonging to the Schooner found on board her, and ſtrictly examined

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this Deponent; that the Schooner on the fourth Day of her being ſo detained by Capt. *Smith* was diſcharged, and allowed by them to proceed in her intended Voyage; the Reaſon Capt. *Smith* diſcharged her was, becauſe he ſaw ſhe was a fair Trader, and together with her Cargo the actual Property of *Aaron Henriques Moron*.

7. Schooner had on board at the Capture all the legal authentic Paſſports or Sea-Briefs and Papers that are carried, or required by the Treaties to be carried, by Ships belonging to the Dominions and Subjects of the *States General*, and neceſſary to warrant their free Trade, purſuant to the Treaties ſubſiſting between his *Britannick* Majeſty and the *States General*; that all the Papers were delivered by Deponent, except one Paper which is his Burgher-Brief, which he ſhewed to Capt. *Kitchen* when they were taken by him; that no Paper whatever belonging to the Schooner or Cargo was at any time thrown over-board, ſecreted, or otherwiſe deſtroyed.

8. That he commanded the Schooner at the Capture, and was born at *Newcaſtle-upon-Tyne* in *England*, and hath been naturalized in the Iſland of *Curacoa* for about twelve Years; reſides with his Wife and Children there; that the whole Crew that belonged to the Schooner when ſhe left *Curacoa* were all *Dutchmen*, except two *Italians* that died ſince they came away; the Crew conſiſted of this Deponent and ſeventeen Men when they were taken, who are all Subjects of the *States-General*.

9. That the ſeveral Paper-Writings now produced to him, and marked N°. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12. are all the principal Papers that were on board the Schooner when taken; that the ſaid Papers, and all others on board, were delivered to the Captors when they were taken.

John Adrians, Mate of the Schooner, examined, 12 *Dec.* 1758.

1. Knows, and has known the Schooner about four Months; that during that Time and at the Capture thereof, ſhe with her Cargo on board, were the Property of *Aaron Henriques Moron*, a Merchant of the *Jewiſh* Nation reſiding at *Curacoa*.

2. That the Cargo at the time of her ſailing from *Curacoa*, was the Property of, and ſhipped in the Name, and on Account and Riſque of the ſaid *Aaron Henriques Moron*.

3. That the Cargo or any Part thereof at her ſailing from *Curacoa*, or at the Capture, did not conſiſt of Powder, Ball, Soldier's Arms, or any or either of the Articles declared to be contraband by the Declaration of War againſt *France*, or by any Treaty ſubſiſting in Force between *Great-Britain* and *Holland*.

4. Doth not know what private Adventures the Claimant in this Cauſe, or his Supra-Cargo might have on board the Schooner at the Capture; that Deponent had on board her two Barrels of Indigo and four Bales of Coffee his own actual Property.

5. That neither the Schooner, her Cargo, or private Adventures on board her at the Capture, or any Part thereof, was the Property of, or held in Truſt for the *French* King, his Subjects, or Vaſſals, or any of them.

6. That the Schooner was on her preſent Voyage with her preſent Lading on board, met withal [illegible] and *Hiſpaniola* before her Capture, and was detained about four Days, and ſearched, and broke the Sealing of the Cabbin, looking and ſearching for *French* Papers, but finding every thing fair and regular they diſcharged her.

7. That the Schooner at the Capture had on board all and every the legal and authentick Sea Papers, Vouchers, and Documents, carried, or required by Treaties to be carried by *Dutch* Veſſels belonging to the Subjects of the *States General*, and neceſſary to warrant their free Navigation and Trade; that the ſaid Papers were delivered to the Captors in this Cauſe, and no Paper whatever was burnt, ſecreted, thrown over-board or deſtroyed, belonging or relating to her or her Cargo.

8. That the Claimant commanded the Schooner at her Capture, and is a Reſident of *Curacoa* and a Subject of the *States General*; that her Crew are all Subjects of the ſaid States.

Witneſſes examined on additional Interrogatories on Behalf of the Claimant.

John Gardner, Maſter of the Schooner, examined, 15 *Dec.* 1758.

That he hath looked upon the Paper Writing marked (X) now ſhewn to him, which purports to be a Burgher Brief for this Deponent; that he is a naturalized Subject of the *States General*; that the ſame is properly authenticated in the Manner Papers of that Nature among the *Dutch* uſually are; hath alſo looked upon the Paper marked (Y) now produced to him; that the ſame is a true and exact Tranſlation of the Paper marked (X) from the *Dutch* Language into *Engliſh*, according to the beſt of the Deponent's Knowledge in thoſe Languages; That he hath been a Reſident of *Curacoa* for ten Years paſt or upwards.

William Anderſon, of *Kingſton* in *Jamaica*, Goldſmith, 19 *Dec.* 1758.

1. That he hath looked upon the ſeveral *Dutch* Paper Writings now ſhewn to him, marked N°. 1. 2. 3. 4. 5. 6. 7. and the ſeveral *Engliſh* Papers to them reſpectively annexed, the latter are true an exact Tranſlations of the former into *Engliſh*, according to the beſt of Deponent's Knowledge and Judgment in thoſe Languages.

2. That he hath looked upon the Paper Writing marked (X) now produced to him; that the ſame purports to be a Burgher-Brief, or Letters of Naturalization for one *John Gardner*, at *Curacoa*; it is as Deponent believes, duly authenticated, as Papers of that Nature uſually are among the *Dutch*; hath looked alſo upon the Paper marked (Y) now alſo produced to him, that the ſame is a true and exact Tranſlation of the Paper marked (X) from the *Dutch* Language into *Engliſh*, according to the beſt of Deponent's Judgment in thoſe Languages.

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Exhibit (A.)

WE *Iſaac Faeſch*, Governor over *Curacoa* and the Diſtricts thereunto belonging, repreſenting their High Mightineſſes the *States General* of the *United Provinces*, alſo the Great and Honourable the Directors General of the Contractors of the *Weſt-India* Company of the ſaid Provinces: To all Perſons who ſhall ſee theſe or hear it read, (ſalute) give to underſtand.

Whereas *John Gardner*, Maſter of the Schooner named the *Queen Eſther*, by Conſent of his Owners, Merchants of this Place, have requeſted our Permiſſion and Conſent to navigate his Veſſel to all free Places in the *Weſt-Indies*; to which juſt Requeſt we have agreed, and have granted a Sea-Brief to the aforeſaid Maſter in proper Form by theſe Preſents, howbeit, if it ſhould happen ſaid Maſter ſhould lying at Anchor in any Place, or that he be in the open Seas, and ſhould be attacked by Sea Rovers, Pirates, or thoſe that would ſtop the Liberty of the Seas or the Trade thereof, contrary to the Treaties of our Sovereign the aforeſaid High Mightineſſes, and other Powers their Allies, ſolemnly agreed upon and are in full Force; that if it ſhould be in his Power, if poſſible to overcome ſaid Sea-Rovers, Pirates, or thoſe that would ſtop the Liberty of the Sea or the Trade thereof contrary to the aforeſaid Treaties, to bring them up into this Harbour to be proceeded againſt as Sea-Rovers, Pirates, or ſuch as would hinder the Liberty of the Seas according to the Tenor of the aforeſaid Treaties and the general Laws of the Seas.

Laſtly, We charge the aforeſaid Maſter, *John Gardner*, that he, and all his Schooner's Company be careful and behave in Conformity to the aforeſaid Treaties; and this our Commiſſion which we have granted upon Pain and Penalty of the aforeſaid Treaties and general Laws of the Sea. We further deſire and requeſt as above written, that all Officers high or low, by Land or by Water, that the aforeſaid Maſter, *John Gardner*, may be ſuffered to paſs free and unmoleſted on his Voyage, and return without any Lett or Hindrance to be done unto him, and not to conſtrain or oblige him further than what he is Bounden to by the aforeſaid Treaties and Laws of the Sea: And further, in caſe of Neceſſity, and he ſhould deſire to to give him all Help and Aſſiſtance, as we on ſuch Occaſions ſhould, and endeavour to oblige; the which we will always acknowledge with becoming Thanks.

Given under our Hands and the Great Seal of the Great and Honourable the Contractors General of the *Weſt-India* Company in Fort *Amſterdam* upon *Curacoa*, the Fifth Day of *September*, 1758.

J. FAESCH,

By Order of the Court

BUGHY
Secretary.

Exhibit D.

I *John Gardner*, Maſter of my Schooner (next to God) named the *Queen Eſther*, now lying ready to ſail with the firſt fair Wind, which God ſhall pleaſe to favour me with, from the *Cape* to *Curacoa*, which is my proper place to unload at, do acknowledge to have received under the Deck of my Schooner from you *Gabriel Pinedo*,

108 large Caſks and 43 ſmall with white Sugar, wt. nt. 123221 lb.
AM 34 Caſks Indigo——————————6003
51 Bags Coffee——————————9451

all dry and well conditioned and marked as per Margin, which I promiſe to deliver, if God ſhould favour my ſafe Arrival with my aforeſaid Schooner at *Curacoa*, unto Mr. *Aaron Henriques Moron*, or unto his Factor or Deputy, paying me Freight for the ſaid Goods.

And the Average according to the Cuſtom of the Sea; and to fulfil what is above written I do bind myſelf and all my Goods, as alſo my aforeſaid Schooner with all her Appurtenances. In Knowledge of the Truth, have I Original four Bills of Lading, or my Purſer with my Name, all of one Tenor, one being fulfilled the other to ſtand void, at the *Cape* 16 *October*, *Anno* 1758.

Inſides unknown. *JOHN GARDNER.*

Lords Commissioners for Appeals.

KONINGHEN ESTHER,

JOHN GARDNER, Master.

APPENDIX

TO THE

RESPONDENTS CASE.